

LODGING TAX – CHAPTER 22

	<u>Section</u>
Definitions	22-001
Imposition of Tax.....	22-002
Collections	22-003
Exceptions and Exemptions.....	22-004
Advertising No Tax	22-005
Payment and Returns	22-006
Examination of Return, Adjustments, Notices and Demands	22-007
Refunds	22-008
Failure to File a Return	22-009
Penalties	22-010
Administration of Tax.....	22-011
Examine Records	22-012
Contract with State.....	22-013
Violations.....	22-014
Use of Proceeds.....	22-015
Appeals	22-016

CHAPTER 22 - LODGING TAX

Section 22-001. DEFINITIONS. For the purpose of this chapter, the following terms, phrases and words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

Subd. 1. The term "Director" means the Finance Director of the City.

Subd. 2. The term "City" means the City of Brooklyn Center.

Subd. 3. The term "lodging" means the furnishing for a consideration of lodging by a hotel, motel or rooming house except where such lodging shall be for a continuous period of thirty (30) days or more to the same lodger(s). The furnishing of rooms by religious, educational or nonprofit organizations shall not constitute "lodging" for purposes of this Chapter.

Subd. 4. The term "operator" means a person who provides lodging to others or any officer, agent or employee of such person.

Subd. 5. The term "person" means any individual, corporation, partnership, association, estate, receiver, trustee, executor, administrator, assignee, syndicate, or any other combination of individuals. Whenever the term "person" is used in any provision of this chapter prescribing and imposing a penalty, the term as applied to a corporation, association, or partnership, shall mean the officers, or partners thereof as the case may be.

Subd. 6. The term "rent" means the total consideration valued in money charged for lodging whether paid in money or otherwise, but shall not include any charges for services rendered in connection with furnishing lodging other than the room charge itself.

Subd. 7. The term "lodger" means the person obtaining lodging from an operator.

Section 22-002. IMPOSITION OF TAX. There is hereby imposed a tax of six (6%) percent on the rent charged by an operator for providing lodging to any person after the adoption of this ordinance and upon thirty (30) days following its legal publication. The tax shall be stated and charged separately and shall be collected by the operator from the lodger. The tax collected by the operator shall be a debt owed by the operator to the City and shall be extinguished only by payment to the City. In no case shall the tax imposed by this section upon an operator exceed the amount of tax which the operator is authorized and required by this chapter to collect from a lodger.

Section 22-003. COLLECTIONS. Each operator shall collect the tax imposed by this chapter at the time the rent is paid. The tax collections shall be deemed to be held in trust by the operator for the City. The amount of tax shall be separately stated from the rent charged for the lodging.

Section 22-004. EXCEPTIONS AND EXEMPTIONS.

Subd. 1 EXCEPTIONS. No tax shall be imposed on rent for lodging paid by any officer or employee of a foreign government who is exempt by reason of express provisions of federal law or international treaty.

Subd. 2. EXEMPTIONS. An exemption shall be granted to any person as to whom or whose occupancy it is beyond the power of the City to tax. No exemption shall be granted except upon a claim therefor made at the time the rent is collected, and such a claim shall be made in writing and under penalty of perjury on forms provided by the City. All such claims shall be forwarded to the City when the returns and collections are submitted as required by this chapter.

Section 22-005. ADVERTISING NO TAX. It shall be unlawful for any operator to advertise or hold out or state to the public or any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent or that, if added, it or any part thereof will be refunded. In computing the tax to be collected, amounts of tax less than one cent shall be considered an additional cent.

Section 22-006. PAYMENT AND RETURNS. The taxes imposed by this chapter shall be paid by the operator to the City monthly not later than 25 days after the end of the month in which the taxes were collected. At the time of payment the operator shall submit a return upon such forms and containing such information as the Director may require. The return shall contain the following minimum information.

1. The total amount of rent collected for lodging during the period covered by the return.
2. The amount of tax required to be collected and due for the period.
3. The signature of the person filing the return or that of his agent duly authorized in writing.
4. The period covered by the return.
5. The amount of uncollectable rental charges subject to the lodging tax.

The operator may offset against the taxes payable with respect to any reporting period, the amount of taxes imposed by this chapter previously paid as result of any transaction the consideration for which became uncollectable during such reporting period, but only in proportion to the portion of such consideration which became uncollectable.

Section 22-007. EXAMINATION OF RETURN, ADJUSTMENTS, NOTICES AND DEMANDS. The Director may rely upon the Minnesota sales tax return filed by the operator with the State of Minnesota in determining the accuracy of a return filed under this ordinance. However, the Director shall be authorized to make any investigation or examination of the records and accounts of the person making the return, if the Director reasonably determines that such steps are necessary for determining the correctness of the return. The tax computed on the basis of such examination shall be the tax to be paid. If the tax due is found to be greater than that paid, such excess shall be paid to the City within ten (10) days after receipt of a notice thereof, given either personally or sent by registered mail to the address shown on the return. If the tax paid is greater than the tax found to be due, the excess shall be refunded to the person who paid the tax to the City within ten (10) days after determination of such refund.

Section 22-008. REFUNDS. Any person may apply to the Director for a refund of taxes paid for a prescribed period in excess of the amount legally due for that period, provided that no application for refund shall be considered unless filed within one year after such tax was paid, or within one year from the filing of the return, whichever period is the longer. The Director shall examine the claim and make and file written findings thereon denying or allowing the claim in whole or in part and shall mail a notice thereof by registered mail to such person at the address stated upon the return. If such claim is allowed in whole or in part, the Director shall credit the amount of the allowance against any taxes due under this chapter from the claimant and the balance of said allowance, if any, shall be paid by the Director to the claimant.

Section 22-009. FAILURE TO FILE A RETURN.

Subd. 1. If any operator required by this chapter to file a return shall fail to do so within the time prescribed, or shall make, willfully or otherwise, an incorrect, false, or fraudulent return, the operator shall, upon written notice and demand, file such return or corrected return within five (5) days of receipt of such written notice and shall at the same time pay any tax due on the basis thereof. If such person shall fail to file such return or corrected return, the Director shall make a return or corrected return, for such person from such knowledge and information as the Director can obtain, and assess a tax on the basis thereof, which tax (less any payments theretofore made on account of the tax for the taxable period covered by such return) shall be paid upon within five (5) days of the receipt of written notice and demand for such payment. Any such return or assessment made by the Director shall be *prima facie* correct and valid, and such person shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

Subd. 2. If any portion of a tax imposed by this chapter, including penalties thereon, is not paid within thirty (30) days after it is required to be paid, the City Attorney may institute such legal action as may be necessary to recover the amount due plus interest, penalties, the costs and disbursements of any action.

Subd. 3. Upon a showing of good cause, the Director may grant an operator one thirty (30) days extension of time within which to file a return and make payment of taxes as required by this chapter provided that interest during such period of extension shall be added to the taxes due at the rate of ten (10%) percent per annum.

Section 22-010. PENALTIES.

Subd. 1. If any tax imposed by this chapter is not paid within the time herein specified for the payment, or any extension thereof, there shall be added thereto a specific penalty equal to ten (10%) percent of the amount remaining unpaid.

Subd. 2. In case of any failure to make and file a return within the time prescribed by this chapter, unless it is shown that such failure is not due to willful neglect, there shall be added to the tax in addition to the ten (10%) percent specific penalty provided in subdivision 1 above, ten (10%) percent if the failure is for not more than thirty (30) days with an additional five (5%) percent for each additional thirty (30) days or fraction thereof during which such failure continues, not exceeding twenty-five (25%) percent in the aggregate. If the penalty as computed does not exceed \$10, a minimum penalty of \$10 shall be assessed. The amount so added to any tax shall be collected at the same time and the same manner and as a part of the tax unless the tax has been paid before the discovery of the negligence, in which case the amount so added shall be collected in the same manner as the tax.

Subd. 3. If any person willfully fails to file any return or make any payment required by this chapter, or willfully files a false or fraudulent return or willfully attempts in any manner to evade or defeat any such a tax or payment thereof, there shall also be imposed as a penalty an amount equal to fifty (50%) percent of any tax (less any amounts paid on the basis of such false or fraudulent return) found due for the period to which such return related. The penalty imposed by this subdivision shall be collected as part of the tax, and shall be in addition to any other penalties provided by this chapter.

Subd. 4. All payments received shall be credited first to penalties, next to interest, and then to the tax due.

Subd. 5. The amount of tax not timely paid, together with any penalty provided by this section, shall bear interest at the rate of eight (8%) percent per annum from the time such tax should have been paid until paid. Any interest and penalty shall be added to the tax and be collected as part thereof.

Section 22-011. ADMINISTRATION OF TAX. The Director shall administer and enforce the assessment and collection of the taxes imposed by this chapter. The Director shall cause to be prepared blank forms for the returns and other documents required by this chapter and shall distribute the same throughout the City and furnish them on application, but failure to receive or secure them shall not relieve any person from any obligation required of him under this chapter, unless it can be established that the required forms were not available from the City.

Section 22-012. EXAMINE RECORDS. The Director and those persons acting on behalf of the Director authorized in writing by the Director may examine the books, papers and records of any operator in order to verify the accuracy of any return made, or if no return was made, to ascertain the tax as provided in this chapter. Every such operator is directed and required to give to the said Director or to his duly authorized agent or employee the means, facilities and opportunity for such examinations and investigations as are hereby authorized.

Section 22-013. CONTRACT WITH STATE. The City Manager is authorized to confer with the Minnesota Commissioner of Taxation to the end that an agreement between the City and the Commissioner of Taxation may be entered into for the purpose of providing for the administration and collection of the taxes imposed by this chapter. Such an agreement shall not become effective until presented to the Council for its approval, and when so approved the tax imposed by this chapter shall be collected and administered pursuant to the terms of said agreement.

Section 22-014. VIOLATIONS. Any person who shall willfully fail to make a return required by this chapter; or who shall fail to pay the tax after written demand for payment; or who shall fail to remit the taxes collected or any penalty or interest imposed by this chapter after written demand for such payment; or who shall refuse to permit the Director or any duly authorized agents or employees to examine the books, records and papers under his or her control; or who shall willfully make any incomplete, false or fraudulent return shall be guilty of a misdemeanor.

Section 22-015. USE OF PROCEEDS. Ninety-five (95%) percent of the gross proceeds from the first three (3%) percent of the tax imposed by this ordinance shall be used in accordance with Minnesota Statutes Section 469.190 as the same may be amended from time to time to fund a local convention or tourism bureau for the purpose of marketing and promoting the City as a tourist or convention center.

Section 22-016. APPEALS.

Subd. 1. Any operator aggrieved by any notice, order or determination made by the Director under this chapter may file a petition for review of such notice, order or determination detailing the operator's reasons for contesting the notice, order or determination. The petition shall contain the name of the petitioner, the petitioner's address and the location of the lodging subject to the order, notice or determination.

Subd. 2. The petition for review shall be filed with the City Clerk within ten (10) days after the notice, order or determination for which review is sought has been mailed or served upon the person requesting review.

Subd. 3. Upon receipt of the petition the City Manager, or his designee, shall set a date for a hearing and give the petitioner at least five (5) days prior written notice of the date, time and place of the hearing.

Subd. 4. At the hearing, the petitioner shall be given an opportunity to show cause why the notice, order or determination should be modified or withdrawn. The petitioner may be represented by counsel of petitioner's choosing at petitioner's own expense.

Subd. 5. The hearing shall be conducted by the City Manager or his designee, provided only that the person conducting the hearing shall not have participated in the drafting of the order, notice or determination for which review is sought.

Subd. 6. The person conducting the hearing shall make written findings of fact and conclusions based upon the applicable sections of this chapter and evidence presented. The person conducting the hearing may affirm, reverse or modify the notice, order or determination made by the Director.

Subd. 7. Any decision rendered by the City Manager pursuant to this subdivision may be appealed to the City Council. A petitioner seeking to appeal a decision must file a written notice of appeal with the City Clerk within ten (10) days after the decision has been mailed to the petitioner. The matter will thereupon be placed on the Council agenda as soon as is practical. The Council shall then review the findings of fact and conclusions to determine whether they were correct. Upon a determination by the Council that findings and conclusions were incorrect, the Council may modify, reverse or affirm the decision of the City Manager or his designee upon the same standards as set forth in subdivision 6.